

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

MARCUS A. JONES,)
)
Petitioner,)
)
v.) No. 2:15CV79 CDP
)
WESLEY C. DALTON,)
)
Respondent,)

MEMORANDUM AND ORDER

Plaintiff, a prisoner seeking a petition for writ of mandamus, seeks leave to proceed in forma pauperis. Having reviewed plaintiff's financial information, the Court assesses a partial initial filing fee of \$10, which is twenty percent of his average monthly deposit. *See* 28 U.S.C. § 1915(b).

Standard of Review

Under Rule 12(h)(3) of the Federal Rules of Civil Procedure, the Court is required to review each case for subject matter jurisdiction, and, if jurisdiction is lacking, to dismiss the case.

The Petition

Petitioner seeks a writ of mandamus ordering respondent, a state court judge, to grant his motion to suppress blood evidence in his trial for driving while intoxicated and second degree murder. *Missouri v. Jones*, No. 13BB-CR00489-02

(Montgomery Circuit). He says a blood sample was taken from him without his consent, and he believes his rights under the Fourth Amendment have been violated. His case is set for trial on January 5, 2016. *Id.*

Discussion

The district courts may only issue writs of mandamus “in aid of their jurisdictions . . .” 28 U.S.C.A. § 1651(a). They lack the power to issue writs of mandamus compelling a *state* actor to act. See 28 U.S.C. § 1361 (“The district courts shall have original jurisdiction of any action in the nature of mandamus to compel *an officer or employee of the United States or any agency thereof* to perform a duty owed to the plaintiff.”) (emphasis added). Therefore, the petition must be dismissed for lack of jurisdiction.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [ECF No. 6] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff must pay an initial filing fee of \$10 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that the petition is **DENIED**, and this action is **DISMISSED**.

An Order of Dismissal will be filed separately.

Dated this 9th day of December, 2015.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE